Supreme Court, U.S.
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No. 98-86

IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

EDWARD J. SHOEN,
Petitioner,

v.

SAMUEL W. SHOEN, CECILIA M. SHOEN-HANLON, THERESA SHOEN-ROMERO, KATRINA M. SHOEN-CARLSON, MICHAEL L. SHOEN, LEONARD S. SHOEN, SAMWILL, INC., CEMAR, INC., KATTYDID, INC., THERMAR, INC., MICKL, INC., AND L.S.S., INC.,
Respondents.

On Petition for a Writ of Certiorari to the Arizona Court of Appeals

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REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

Respondents' Brief in Opposition ("Opp.") does not challenge the importance of the legal issues raised by the punitive damages award entered against petitioner Edward J. ("Joe") Shoen, or take serious issue with the reasons certiorari should be granted here, but instead argues that the punitive damages award is justified based on the particular facts of this case. Respondents' "factual" recitation, however, overlooks the central inescapable circumstance here: that petitioner alone was held liable for $7 million in punitive damages when his only *sanctionable* conduct—casting his vote as one of six members of the AMERCO board of directors—was identical to that of, and taken collectively with, the five other board members. Respond-

ents' factual recitation only serves to reinforce the importance of constraining the discretion of a jury to ensure that awards of punitive damages are based on the legitimate purpose of "punishing *unlawful conduct* and deterring its repetition," *BMW of North America, Inc.* v. *Gore*, 517 U.S. 559, 568 (1996) (emphasis supplied), rather than on "the biases and prejudices of individual jurors," who, in the absence of proper limits, may "target [an] unpopular defendant[ ] and punish [him] selectively." *Pacific Mut. Life Ins. Co.* v. *Haslip*, 499 U.S. 1, 63 (1991) (O'Connor, J., dissenting). The punitive damages award against Joe Shoen resulted from a jury that was allowed to exercise its discretion so as to impose punitive damages against Joe Shoen alone even though his conduct, by itself, could not have caused the damages asserted by the plaintiffs. The punitive damages award here raises important and unsettled issues of due process and equal protection which respondents fail to address and which should be considered by this Court.

1. As explained in the Petition, this Court has required that there be a connection between the award of compensatory damages and any award of punitive damages, to ensure that juror discretion is properly constrained so as to comport with the Due Process Clause. Pet. at 12-13. Respondents do not deny the importance of such a connection, and do not dispute that an issue under the Due Process Clause is raised where the conduct supporting an award of punitive damages could not by itself support any award of compensatory damages. As the Alabama Supreme Court has aptly explained in a case decided since the Petition was filed, "[i]n this era following *BMW of North America* v. *Gore* * * * closer scrutiny of the relationship between compensatory damages and punitive damages is necessary." *Life Ins. Co. of Ga.* v. *Smith*, Nos. 1951773 to 1951777, 1951795 to 1951799, 1998 WL 397468, at *9 (Ala. July 17, 1998) (per curiam) (holding that punitive damages may not be imposed in the absence of an award of compensatory or

nominal damages). Similarly here, the punitive damages award was not based on any award of compensatory damages against Joe Shoen individually. Accordingly, closer scrutiny of the punitive damages award is required because the award of punitive damages is an infinite multiple of the amount of compensatory damages that could have been awarded based on petitioner's conduct, standing alone.

2. Because respondents' argument fails to come to terms with the fact that Joe Shoen's liability for breach of fiduciary duty was based on actions taken collectively and unanimously by the six-member board, respondents have no reply to petitioner's argument that due process is violated where a single individual is made liable for punitive damages based on conduct that was neither necessary nor sufficient to cause the harm allegedly suffered. Pet. at 13-14. While respondents argue that petitioner's actions caused them harm, Opp. at 18, they fail to connect any of Joe Shoen's individual conduct to the legally cognizable injury they suffered—the decrease in value of their stock due to the unanimous and collective conduct by the board.[1] Accordingly, respondents take no issue with petitioner's argument that certiorari should be granted so that this Court may determine whether a jury's discretion in awarding punitive damages is sufficiently constrained where the jury is allowed to award punitive damages against a single individual whose conduct, in the absence of identical, collective conduct by the other defendants, could not be the legal cause of the cognizable injuries suffered by the plaintiffs.

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[1] The Arizona Court of Appeals concluded, based on the arguments of the parties, that the events of the weekend of July 24, 1988 were the primary basis for respondents' claims, and particularly for the computation of damages. Pet. App. 11a. Neither the Court of Appeals nor respondents detail any other actions by Joe Shoen alone that could even arguably result in the diminution in the value of respondents' stock, which is the harm they alleged below as well as in their Opposition. Opp. at 20.

3. Respondents' factual recitation also fails to come to grips with the basis on which the punitive damages award was affirmed by the Arizona Court of Appeals. That court held that "[i]t is immaterial whether Joe took the same actions as the other defendants because the issue is whether those actions were taken with the requisite state of mind." Pet. App. 11a. While respondents provide details of Joe Shoen's allegedly malicious state of mind, they do no better than the courts below did in linking any of that "evidence" to the legally sanctioned conduct below: Joe Shoen's collective action with the entire board of directors.[2] Once again, respondents do not dispute that an issue worthy of certiorari is raised where an award of punitive damages is entered against a defendant based on his state of mind, completely dissociated from any sanctionable conduct. Here, where liability for compensatory damages was based on the action of the board as a whole, it should be the motive of the *board* that is operative in determining the propriety of punitive damages, not the motive of a single member.

4. Respondents further assert that review is not necessary here because Nevada follows the majority rule of allowing punitive damages to be issued against one joint tortfeasor and not another. Opp. at 15-17. Respondents, however, fail to cite a single case, other than the opinion below, where such a rule has been used to justify an award of punitive damages against one of a group of joint tortfeasors whose liability was based on an identical

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[2] In fact virtually every action detailed by respondents on over three pages of the Opposition as "the wrongs alleged at trial" was taken not by petitioner alone, but by the board as a whole. Opp. at 4-7. Moreover, contrary to the respondents' assertions in, among other places, the Questions Presented section of the Opposition, there was no finding by the courts below that petitioner "caused other directors to take actions that constituted breaches of fiduciary duty." *See, e.g.*, Opp. at i; Pet. App. 11a.

collective action taken by all members of the group. *See* Pet. at 14-15.

5. Respondents are incorrect to argue that petitioner has waived his equal protection claim by failing to raise it in the trial court.[3] Pursuant to Arizona law, "[q]uestions of constitutional guarantees and violations thereof may be raised for the first time on appeal." *Gosewisch* v. *American Honda Motor Co.*, 737 P.2d 376, 382 (Ariz. 1987) (citation omitted). As explained in the Petition, petitioner raised his equal protection claim by arguing to the Arizona Court of Appeals that singling him out from the other directors would violate the principle established in *BMW of North America, Inc.* v. *Gore*, 517 U.S. at 568-569. Pet. at 7. The equal protection claim was raised again in the petition for review before the Arizona Supreme Court, without objection by the respondents. Petition for Review at 12-13.

6. The legitimate state interest served by punitive damages awards—"punishing unlawful conduct and deterring its repetition"—is in no way furthered by the punitive damages award here. *BMW*, 517 U.S. at 568. Shoen's "unlawful conduct" was his vote as a member of the board of the directors, but what the punitive damages award was based on—fractious family relations—was not unlawful. This Court should grant certiorari to determine whether equal protection is violated where a jury is allowed to single out one individual—based on his intra-familial relationships—for an award of punitive damages, where the individual's unlawful conduct is a collective identical action of a group.

7. Respondents do not dispute that further guidance to the lower courts on the issues raised by the punitive damages award here is necessary, and furthermore do not

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[3] Respondents concede that petitioner's due process claims were adequately raised below. Opp. at 11, 19.

dispute that such guidance in a business-related case would be particularly appropriate. *See* Pet. at 20-21. Respondents' factual arguments against certiorari are far afield from the legal issues raised by the instant award of punitive damages and do not detract from the importance of those issues.

CONCLUSION

For the foregoing reasons, and the reasons stated in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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